

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THOMAS MCCARTHY; PHAN NGUYEN;  
ELIZABETH RIVIERA GOLDSTEIN;  
LEAH COAKLEY; PATRICK  
EDELBACHER; and CHARLES BEVIS,

Plaintiff,

v.

JAMES BARRETT; HANNAH HEILMAN;  
ALAN ROBERTS; TODD KITSELMAN;  
BARRY PARIS; THOMAS STRICKLAND;  
MICHAEL MILLER; ROBERT SHEEHAN;  
DONALD RAMSDELL; and CITY OF  
TACOMA (TPD),

Defendants.

Case No. C09-5120 RBL

ORDER DENYING IN PART AND  
GRANTING IN PART DEFENDANTS'  
MOTION FOR A PROTECTIVE ORDER  
[Dkt. #35]

THIS MATTER is before the Court on Defendants' Motion for a Protective Order. Dkt. #35. Defendants ask the Court to issue a protective order (1) limiting the scope of production of records pertaining to Plaintiffs (Request for Production 15), and (2) relieving Defendants from producing documents relating to protests at the Port of Tacoma in 2008 and 2009 (RFP 47). The Court, having considered all materials submitted for and against said motion, hereby **ORDERS**:

1. The Defendants' Motion for a Protective Order is DENIED in part and GRANTED in part.
2. **RFP 15:** Federal Rule 26(b) allows discovery of non-privileged material likely "to lead to the discovery of admissible evidence." F.R.C.P. 26(b)(1). The evidence is not necessarily admissible at trial,

1 but it is discoverable when relevant. F.R.C.P. 26(b). Plaintiffs seek production of:

2 all documents, memoranda, call-logs, recordings (audio or video), and police  
3 reports of any detentions, surveillance, arrests or information gathering activities  
4 related to any of the Plaintiffs that took place (1) in the five years prior to the  
5 Stryker Protest, or (2) has taken place since the Stryker Protest.

6 Dkt #35 at 3.

7 Plaintiffs have asserted First Amendment claims, alleging that police restrictions during anti-war  
8 protests attended by Plaintiffs chilled their participation in such activities and violated their First Amendment  
9 rights. Dkt. #42 at 3. Plaintiffs also assert claims under the Washington State Constitution regarding  
10 surveillance. Plaintiffs seek discovery relevant to whether Defendants' actions in preparation of and response  
11 to the protests violated their constitutional rights. *Id.* Defendants argue that this request is unreasonable,  
12 unduly burdensome, and oppressive. Dkt. #35 at 7. The discovery requested by Plaintiffs goes to the heart  
13 of the alleged surveillance conducted by Defendants and the scope of that surveillance, which may or may  
14 not have chilled Plaintiffs' speech. The requested discovery is relevant.

15 Plaintiffs are entitled to the requested information from RFP 15, but the scope of discovery will be  
16 limited to two years preceding the protest, from 2005-2007, rather than Plaintiffs' requested five years.  
17 Defendants' argument that producing the noted items of discovery would be unduly burdensome is not well-  
18 taken. The requested documents are within the scope of discovery and Defendants have a duty to produce  
19 such items. *See* F.R.C.P. 34. Defendants' motion to limit the scope of discovery for RFP 15 is granted only  
20 as to the dates. Defendants must produce all information requested from 2005-2007.

21 3. **RFP 47:** Plaintiffs also request all documents relating to the 2008 and 2009 Stryker Protests held  
22 at the Port of Tacoma. Dkt. #35 at 3. Plaintiffs argue that since the surveillance of Plaintiffs was more  
23 extensive after the March 2007 protest from which their claim arises, the information is relevant. Dkt. #42  
24 at 10. Plaintiffs also argue that the effect of the surveillance had a chilling effect on Plaintiffs, as some  
25 Plaintiffs chose not to participate in the 2008 and 2009 protests because of Defendants' prior actions. *Id.*  
26 Defendants argue that documents relating to 2008 and 2009 are not relevant because no claim has been  
27 asserted regarding those protests. Dkt. #35 at 4. Defendants are correct. Because Plaintiffs have not asserted  
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1 claims regarding the 2008 and 2009 protests, nor regarding surveillance occurring after the 2007 protest, RFP  
2 47 is DENIED WITHOUT PREJUDICE.

3 **IT IS SO ORDERED.**

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5 Dated this 10<sup>th</sup> day of December, 2010.

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8 RONALD B. LEIGHTON  
9 UNITED STATES DISTRICT JUDGE  
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